

REMARKS

Claims 15-37 are now pending in the present application, claims 1-14 having been canceled and claims 20-37 having been added by the present amendment. Applicants respectfully request entry of the present amendment, as the amended claims are in better form for consideration on appeal. Moreover, for the reasons that follow, Applicants contend that the amended claims are in condition for allowance.

Claims 15-19 have been amended. Support for the amendment of **claim 15** can be found in the specification at, for example, page 23, lines 3-9. **Claims 16-18** have been amended in view of the amendment to claim 15 (to, for example, refer to the proper antecedent terms). Amended **claims 16-18** are further supported by original claims 16-18 and by the specification (*see* Example IV). Amended **claim 19** refers to a 70% glycolic acid solution, which is disclosed in the specification at, for example, page 22, second paragraph.

New **claim 20** is also supported by the second paragraph of page 22. New **claim 21** limits the unwanted skin condition to acne, which is disclosed in the specification at, for example, page 5 (*see* the first paragraph of the summary). New **claims 22 and 23** is supported by the specification at, for example, page 13, on or about lines 16-19. New **claims 24 and 25** are supported by original claims 5 and 6 (*see also* the specification at, for example, page 14). New **claims 26-30** are supported by, for example, Example II. New **claims 31 and 32** are supported by the specification at, for example, page 10, lines 1-4. New **claims 33 and 34** are supported by the specification at, for example, page 10, lines 8-9. New independent **claim 35** and the claims that depend therefrom (**claims 36-37**) are also supported by the specification at page 10 (*see* lines 4-7. No new matter has been added.

35 U.S.C. § 102(e)

Claims 1-15 were rejected as being anticipated by Anderson (U.S. Patent No. 6,600,951; herein, "Anderson"). Claims 1-14 have been canceled, and claim 15 has been amended to include limitations not taught by Anderson. In view of the amendment, this ground for rejection should now be withdrawn.

Claim 15 has been amended to include a step of “generating, on the patient’s skin, a target region having substantially clear pores”. The claim continues, specifying that “generating the target region comprises applying an acidic composition to an area of the patient’s skin, heating the area, or mechanically abrading the area.” An exogenous chromophore is then applied to the target region.

Anderson does not suggest generating a target region by the means now claimed -- application of an acidic composition, heat, or a mechanical force -- prior to the application of a chromophore. The Examiner cited two passages in Anderson that relate to cleansing the skin:

Generally, the site of treatment and a major muscle site are cleansed with an alcoholic solution (column 15, lines 54-56; referenced by the Examiner at page 3 of the Office action).

Photochemical stimulation of an energy activatable material causes the material to enter an excited energy state wherein energy is absorbed, e.g., by the chromophore, whereby bonds within the energy activatable material are broken and forms reactive by products such as radical species. These reactive by products can interact with the localized surrounding tissue area such that the tissue is cleansed of unwanted material (6:31-38; referenced by the Examiner at page 3 of the Office action)

Clearly, the first passage limits the cleanser to an alcoholic solution, and the second passage teaches that stimulating the chromophores produces by-products that can cleanse the tissue of unwanted material. It is a by-product from the chromophore that produces the cleansing effect; Anderson is not suggesting that one cleanse the skin prior to application of the chromophore.

For a prior art reference to anticipate claimed subject matter, the reference must disclose all the limitations of the claim. As Anderson does not suggest generating a target region, as is now required by Applicants claim 15, Anderson cannot anticipate claim 15. Moreover, as claims 16-34 depend, or ultimately depend, from claim 15, each of claims 16-34 incorporates the limitations of claim 15. Thus, Anderson cannot anticipate dependent claims 16-34.

New claim 35 is an independent claim covering a method of treating a patient who has acne. The patient receives “a first treatment comprising a topical acne medication” and “a

second treatment comprising applying a chromophore ...” Anderson does not teach or suggest such first and second treatments. Thus, Anderson cannot anticipate claim 35, or the claims that depend therefrom.

35 U.S.C. § 103

Claims 16-19 were rejected as obvious over Anderson in view of Albacarys (U.S. Patent No. 6,338,855; herein, “Albacarys”).

The Examiner states that while Anderson “does not particularly teach the use of glycolic acid solution mixed with a neutralizing agent such as water, bicarbonate, or GLYTONE (*sic.*),” Albacarys teaches “a solution and method for cleaning skin ... including a water soluble glycolic acid solution” (Office action at page 7, citing Albacarys at column 41, lines 47-59; column 50, lines 46-53; the abstract; column 17, line 15 through column 18, line 17; and column 25, line 50 through column 26, line 18).

The Examiner concludes, “[t]herefore, it would have been obvious to ... modify Anderson in view of Albacarys (*sic.*) and use a water [*sic.*] and/or water soluble glycolic acid solution in order to clean the target site” (Office action at page 7).

Applicants respectfully disagree. For a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. MPEP at 2143. Nothing in Anderson suggests that the method taught there would be more effective if one were to generate a target region by the means recited in Applicants’ claim 15. With respect to topical agents, Anderson specifically refers to only an alcoholic solution and demonstrates that sebaceous glands within skin rubbed with alcohol swabs readily take up the hydrophilic dye methylene blue. Anderson’s Fig. 9 shows a sebaceous gland completely filled with the blue dye. Why, then, would one be motivated to treat the skin in any other way, let alone to substitute an acidic solution, heat, or mechanical abrasion for the alcohol? Albacarys does disclose glycolic acid, but the suggested use is within a simple “personal cleansing article” such as a disposable washcloth (see the Abstract). There is nothing in

Albacarys to suggest that a glycolic acid solution should be used to prepare a target region of the skin for application of a chromophore and subsequent irradiation. Moreover, glycolic acid is only one of hundreds of possible agents that can be included in Albacarys' "article". Applicants fail to see any reason why one of ordinary skill in the art, even if they were motivated to modify Anderson's method, would do so by selecting glycolic acid from the long list of agents Albacarys suggests. The mere fact that the references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. MPEP at 2143. In view of the present amendment and the foregoing remarks, the Examiner is respectfully asked to reconsider and withdraw the rejection

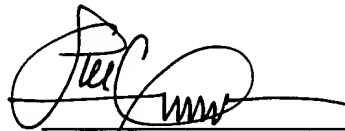
CONCLUSION

Applicants respectfully submit the present claims are in condition for allowance, which action is respectfully requested.

Filed herewith are a Notice of Appeal and a Petition for Extension of Time. Checks for the required fees are also enclosed. If there are any other charges, or any credits, please apply them to Deposit Account No. 06-1050, referencing Attorney Docket No. 00398-175001.

Respectfully submitted,

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Lee Crews, Ph.D.
Reg. No. 43,567

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906